

ENTERED

September 23, 2024

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**EXTREME TECHNOLOGIES LLC and
HARD ROCK SOLUTIONS, LLC,** §
§

Plaintiffs, §
§

VS. §

Civil Case No. 4:19-CV-01977

STABIL DRILL SPECIALTIES LLC, §
§

Defendant. §
§

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the August 13, 2024, Memorandum and Recommendation ("M&R") prepared by Magistrate Judge Peter Bray. (Dkt. No. 265). Judge Bray made findings and conclusions and recommended that Defendant Stabil Drill Specialties, LLC's Second ("Stabil") Motion for Summary Judgment of Non-Infringement, (Dkt. No. 227) be granted; all motions to exclude expert testimony, (Dkt. Nos. 221, 222, 223), be denied as moot; and Stabil's Motion for Summary Judgment of Oral License, (Dkt. No. 225), be denied as moot.

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). On August 27, 2024, Plaintiffs Extreme Technologies, LLC and Hard Rock Solutions, LLC (collectively, "Extreme") filed several objections to Judge Bray's M&R. (Dkt. No. 266). First, Extreme objects that Judge Bray granted summary judgment on a ground that Stabil did not raise, meaning that Extreme did not have adequate notice or a sufficient opportunity to respond. (Dkt. No. 266 at 12-

13). Second, Extreme objects that the M&R is inconsistent with the Judge Bray's claim construction. (Dkt. No. 266 at 13–14). Third, Extreme objects to Judge Bray's conclusion that there was no evidence to show that the parts of the Smoothbore lacking teeth actually cut earth when the reamer rotates in the ground. (Dkt. No. 266 at 15–25). Finally, Extreme objects that the M&R disregards the deposition testimony of Stabil's designer or inventor. (Dkt. No. 266 at 25–26). On September 10, 2024, Stabil responded to Extreme's objections. (Dkt. No. 270).

In accordance with 28 U.S.C. § 636(b)(1)(C), the Court is required to "make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection [has been] made." After conducting this de novo review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.*; *see also* Fed. R. Civ. P. 72(b)(3).

The Court has carefully considered de novo those portions of the M&R to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding no error, the Court accepts the M&R and adopts it as the opinion of the Court. It is therefore ordered that:

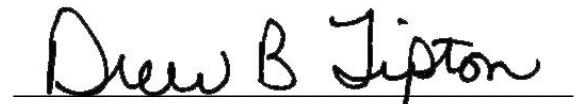
- (1) Magistrate Judge Peter Bray's M&R, (Dkt. No. 265), is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court;
- (2) The Parties' motions to exclude expert testimony, (Dkt. Nos. 221, 222, 223), are **DENIED as MOOT**;
- (3) Defendant Stabil Drill Specialties, LLC's Motion for Summary Judgment of Oral License, (Dkt. No. 225), is **DENIED as MOOT**; and

(4) Stabil Drill Specialties, LLC's Second Motion for Summary Judgment of Non-Infringement, (Dkt. No. 227), is **GRANTED**.

A final judgment will issue separately.

It is SO ORDERED.

Signed on September 23, 2024.


DREW B. TIPTON
UNITED STATES DISTRICT JUDGE